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12 Legal Representatives for Complainant

13 **BEFORE THE**
14 **PHYSICAL THERAPY BOARD OF CALIFORNIA**
15 **DEPARTMENT OF CONSUMER AFFAIRS**
16 **STATE OF CALIFORNIA**

17 In the Matter of the Statement of Issues
18 Against:

Case No.

19 **STATEMENT OF ISSUES**

20 STEVEN SAGER
21 2183 N. Valley Street
22 Berkeley CA 94702

23 Respondent.

24 Complainant alleges:

25 PARTIES

26 1. Steven K. Hartzell (Complainant) brings this Statement of Issues
solely in his official capacity as the Executive Officer of the Physical Therapy Board of
California, Department of Consumer Affairs.

27 2. On or about June 30, 2003, the Physical Therapy Board of
California, Department of Consumer Affairs received an application for a Physical
Therapy Assistant License from Steven Sager (Respondent). On or about June 1,
2003, Steven Sager certified under penalty of perjury to the truthfulness of all
statements, answers, and representations in the application. The Board denied the
application on August 11, 2003.

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JURISDICTION

3. This Statement of Issues is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2660 of the Code states:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

(l) The commission of any fraudulent, dishonest, or corrupt act

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which is substantially related to the qualifications, functions, or duties of a physical therapist.

6. Section 475 of the Code states:

A(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

A(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.


 Conviction of a crime.

A(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

A(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

7. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.  action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

"(3) Done any act which if done by a licentiate of the business or

profession in question, would be grounds for suspension or revocation of license.

"The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

. . . .

"(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license."

8. Section 490 states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction)

9. Respondent's application is subject to denial under sections 480(a)(1) and 480 (a)(3) through sections 490 and 2660(d) [conviction], in that he was convicted of a violation of Arizona Penal Code section 13-1802(a)(1), theft, a misdemeanor . The circumstances are as follows:

A. On or about February 28, 1995, as part of an ongoing operation to deter thefts at the Phoenix airport in Arizona, the Phoenix Police Department

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2 conducted an undercover operation consisting of placing personal valuables in areas of
3 the airport and monitoring persons discovering these items. In a certain telephone
4 booth, the police placed a business file folder with clear plastic pockets at an empty pay
5 phone terminal. Inside the file folder, in one of the plastic pockets, a business card
6 stating "Property of Joe Brennan 6815 S. McClintock Tempe AZ 85283 mobile # 228-
7 7866" was clearly visible in the front of the file. The file also contained five twenty dollar
8 bills, and 50-60 business cards.

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10 B. Respondent walked up to the phone booth where the card file had
11 been left. He picked up the card case, examined the contents and put it into his travel
12 bag. He then went to the men=s room near the phone bank. Phoenix Police Officer
13 Fribbs followed respondent into the men=s room and observed respondent walk into the
14 fifth stall east in the room and respondent closed the door behind him. Officer Fribbs
15 then walked out of the men=s room. Detective Brennan entered the men=s room. As
16 he did so, he saw respondent exit the stall. Detective Brennan entered the stall and
17 saw the piece of paper "Property of Joe Brennan" going down the toilet. Detective
18 Brennan recognized the paper because he had authored the note. Resting on the base
19 of the toilet seat against the wall was a stack of business cards. Detective Brennan
20 recognized the cards as the ones he had placed into the card case. He did not see the
21 card case itself, or the five twenty dollar bills. Respondent walked out of the men=s
22 room, passed a customer service counter and a uniformed police officer, and was
23 heading for a gate to board a plane. Officer Williams then arrested respondent for a
24 violation of Arizona Penal Code section 13-1802(a)(1), theft, a misdemeanor. Officer
25 Williams searched respondent and found five twenty dollar bills in respondent=s right
26 front pants pocket. The bills were identified by Detective Brennan as the money he had
~ placed in the card file. Respondent had placed the empty business card folder in his

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2 carry on bag.

3 C. Respondent was convicted of a violation of Arizona Penal code
4 section 13-1802(a)(1), theft, a misdemeanor and sentenced to pay a fine of \$236.00.

5 SECOND CAUSE FOR DENIAL OF APPLICATION

6 (Dishonest act)

7 10. The allegations of paragraph 9 are incorporated herein by
8 reference as if fully set forth.

9 11. Respondent's application is subject to denial under sections
10 480(a)(2) and 480(a)(3) through section 2660(l) [false statement] in that he failed to
11 reveal his 1995 conviction in his application for licensure, as required.

12 A. On or about June 1, 2003, respondent submitted an application for
13 licensure as a physical therapist assistant. He signed the application under penalty of
14 perjury. Question 18 of the application asks: AHave you ever been convicted of, or
15 pled nolo contendere to any offense in any state in the United States or a foreign
16 country? . . . Even if you were pardoned, pled nolo contendere, or if the conviction was
17 later expunged from the record of the court or set aside under Penal Code section
18 1203.4, or any other federal or state law equivalent, you must disclose the conviction. . .
19 Failure to disclose all convictions, including those out of state or out of country may
20 result in the revocation of your license or cancellation of your application and may result
21 in the denial of your application.@ Respondent checked the box next to Ano.@ In fact,
22 respondent was convicted in 1995 of a violation of Arizona Penal Code section 13-
23 1802(a)(1), misdemeanor theft.

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the
26 matters herein alleged, and that following the hearing, the Physical Therapy Board of
California issue a decision:

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1. Denying the application of Steven Sager for a Physical Therapy Assistant license;
2. Taking such other and further action as deemed necessary and proper.

DATED: October 15, 2003

Original Signed By:
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant